

Original filed 9/30/06

NOT FOR CITATION
 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL STERLING,)	No. C 06-1635 JF (PR)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
vs.)	
)	
WILLIAM ALSUP,)	
)	
Respondent.)	

Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254 challenging his 1998 San Francisco Superior Court conviction. Petitioner has paid the filing fee. Petitioner has filed two earlier habeas actions with the Court, case nos. C 01-3809 WHA and C 06-1583 WHA (PR), challenging the same conviction and sentence raised in the instant petition. Petitioner's first habeas action, case no. C 01-3809 WHA, was denied on the merits on February 22, 2002. The Court of Appeals affirmed the denial of the petition in 2003. Petitioner's second habeas action, case no. C 06-1583 JF (PR), was dismissed as a second or successive petition pursuant to 28 U.S.C. § 2244(b)(1), (3). The Court will DISMISS the instant petition as a second or successive petition pursuant to 28 U.S.C. § 2244(b).

DISCUSSION

A district court must dismiss claims presented in a second or successive habeas petition challenging the same conviction and sentence unless the claims presented in the previous petition were denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); Babbitt v. Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999). Additionally, a district court must dismiss any new claims raised in a successive petition unless the petitioner received an order from the court of appeals authorizing the district court to consider the petition. See 28 U.S.C. § 2244(b)(2), (3).

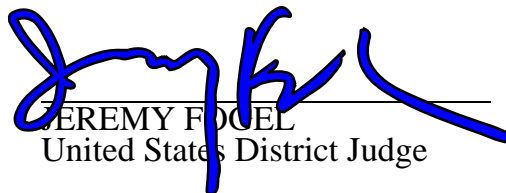
Here, the instant petition challenges the same conviction and sentence as Petitioner's earlier habeas actions in case no. C 01-3809 WHA and C 06-1583 WHA (PR). The earlier habeas petition, in case no. C 01-3809 WHA, was denied on the merits, and Petitioner has not presented an order from the Court of Appeals authorizing this Court to consider any new claims. Accordingly, this Court must dismiss the instant petition in its entirety. See 28 U.S.C. § 2244(b)(3)(A).

CONCLUSION

The instant petition is DISMISSED without prejudice as a second and successive petition pursuant to 28 U.S.C. § 2244(b)(2). The Clerk shall terminate any pending motions and close the file.

IT IS SO ORDERED.

DATED: 9/30/06


JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

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3 Daniel Sterling
4 K-85278
5 Pleasant Valley State Prison
6 P.O. Box 8502
7 Coalinga, CA 93210
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